THE MINOR IN JEWISH LAW

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CHAPTER IV. POWERS AND RIGHTS OF THE FATHER OVER THE MINOR

A. Property of the Minor Children.

The property inherited by children (as, for instance, from their mother) does not belong to their father. Nor do the gains obtained from such property belong to the father (Ketubbot 46 b).

The case is, however, different with acquired property. To what extent the minor enjoys the power of acquisition, when not interfered with by the rights of the father, will be discussed in another place. Here we will touch on it only to the extent to which it comes in conflict with the power of the father over the minor. According to Mishnic data, neither the son nor the daughter enjoy any power of acquisition independent of that of father. The common expression, which deprives the minor of this power is, 'for their hand (i.e. the minors') is like his hand (the father's)'. Neither the minor son nor the minor daughter can become the agent, by the order of the father, to acquire the alley for its other residents, in order that through the common possession of the alley its inhabitants may be allowed to carry things from one residence to the other. The reason given by the Mishnah is, because 'their hand are like his hand'.[142] One cannot

[142] Erub. VII, 6; Gem., *ibid.* 79; Git. 65 a.

give money as a gift to his minor son or minor daughter with which to redeem his tithes of the second year, in order that he may be exempt from the Ḥomesh (a fifth part of the value of the tithes which one is supposed to add on redeeming it). The reason given by the Mishnah is that 'their hand is like his hand'.[143] In both of these cases the children's actions of acquisition are invalid. This is the negative aspect of the principle that 'their hand is like his hand'. A positive aspect of it is the law which states that the found article of the minor belongs to his father.[144]

In these three instances it is plainly seen that the minor can have no power of acquisition for himself while the father is alive, and that the latter is entitled to all the property acquired by the minor. This is fully warranted by the expression, 'their hand is like his hand'. It is not only the found article of the minor, but also all his earnings that go to the father. The found article of the minor is not the only instance, but an instance in which we see this right of the father realized. Furthermore, as far as these three Mishnic instances are concerned, no difference is made between the minor son and the minor daughter with regard to the power of acquisition.[145] These three laws of the Mishnah are, of course, a survival of the older Jewish

[143] Ma'aser Sheni IV, 4; Git. 65 a.

[144] B. M. 1, 5; Gem., *ibid.* 12 a. The Mishnah does not mention here the maxim, 'their hand is like his hand'. But this is undoubtedly the underlying principle of the law of the found article. See Tos. Git. 64 b; B. M. 12 b.

[145] Otherwise, the father is seen to exercise more power over the daughter than over the son in the Mishnah. The Mishnah states, for instance, that the father has the power to give his daughter in marriage. But the father cannot exercise this power with regard to the son. In Biblical times, however, the father exercised this right even with regard to his son.

law, where the parental power was comparatively great.[146]

Later law, however, has modified and limited the parental power. It first of all rendered complete the differentiation between the paternal power over the son and the paternal power over the daughter. In the case of the son, it seems that the property acquired by the minor which goes to the father is only that obtained by finding. The earnings of the minor son do not go to his father. Even the fact that the found article of the minor son should belong to his father, seemed strange to the Amoraim,[147] and consequently they tried to account for it.[148]

According to Samuel, the found article belongs to the father, because the moment he picked up the object, the minor son thought of bringing it to his father. According to Johanan, the matter is altogether different. The found article belongs to the father in return for the support he gives to his children. Therefore, the father's right to

[146] The expression 'their hand is like his hand', describing the relation between the father and his minor children, is used also in describing the relation between the master and his Gentile slave (Ma'aser Sheni IV, 4; Erub. VII, 6). If the relation between the former is equal to the relation between the latter, then the old Jewish law considered the minor children as the chattel of the father.

[147] Accordingly, they ask the question, 'Why do they say that the found article of the minor belongs to the father?' Such a question cannot be raised at all when we look upon the minor from the point of view of the Mishnah, which describes his relation to his father by the words 'their hand is like his hand'.

[148] The reason given by Samuel and R. Johanan (B. M. 12b) can certainly not account for the general principle that 'their hand is like his hand'. Tos. realized the difficulty, and tried to explain it (Tos. Git. 64b). But it is not satisfactory. The best way to explain it is by the view adopted here.

the possession of the found article depends on whether he supports his children. When the children are supported by him, the found article belongs to the father even though the children are of age. But if they are not supported by the father, the found article belongs to the children, even though they are not of age.[149]

The reason given by the Talmud for the father's right to the found article of the minor daughter, is the enmity that may be aroused in the father if the found article be not given to him. According to Rashi, the enmity that is feared here is the one that may result in withholding his support from his daughter.[150] According to Tosafot, it is feared that he may not, because of being deprived of the found article, procure a proper husband for his daughter.[151]

The earnings of the daughter belong to the father.[152] The Talmud is silent about the earnings of the son. This is due to the fact that probably little was earned by the minor son, who had to attend to his studies. Should the minor son be capable of earning money, it would belong to the father, according to the earlier Jewish law.[153] In

[149] B. M. 12. The law is decided according to R. Johanan. See *ibid.* Tos.

[150] Ket. 47a. This seems to coincide with the view R. Johanan has concerning the found article of the son. Yet we must not say that, according to the interpretation of Rashi, the found article of the minor daughter does not belong to the father when she is not supported by the father, for it may be said that this Talmudic view, as interpreted by Rashi, gives its own reason only for the found article of a Na'arah, while it agrees with Samuel as far as the minor is concerned. See Tosef., *ibid.*

[151] *Ibid.*

[152] Ket. 46b, 47a. The Talmud tries to give various reasons for this law. But no reasons should be necessary, when we accept the principle that 'their hand is like his hand'.

[153] The reason given by the Talmud (*ibid.*) for the rights of the father

later Jewish law, the only right the father exercises over his minor son is that of the found article. All other rights are enjoyed by the father over the minor daughter.

B. GIVING THE MINOR DAUGHTER IN MARRIAGE.

The father has the exclusive right of giving his minor daughter in marriage.[154] Not only has he the power of giving his daughter in marriage without her consent, but he is, as it were, the real party with whom the marriage is contracted. The father is not an agent acting for his daughter, for then the marriage would be void, just as any other marriage of a minor is void. Besides, the father cannot act in the capacity of an agent for his minor daughter, since the minor has no power to appoint an agent. The marriage of the minor daughter contracted by the father is a real marriage, and Biblically valid. This is so, because the second party to the marriage contract is not the minor daughter but the father who is a person possessing legal powers.

The marriage contracted by the minor daughter against the consent of the father is void, not only because of the legal incapacity due to her minority, but also because she exercises a right which does not belong to her. According to Resh Lakish, however, there is an opinion which holds that a *na'arah* can contract her own marriage.[155]

According to the Palestinian Talmud even Resh Lakish admits that all agree that the *na'arah* cannot actually enter into the marriage relation[156] without the consent of the

to the service of his daughter do not hold good for the right of the father to the service of the son.

[154] Ket. 46b; Kid. 41a. [155] Kid. 43b.

[156] Jewish law distinguishes between the betrothal or nuptials and marriage proper; the former consisting of delivering into the bride's hand

father. For this act removes her completely from the father's power and makes him lose her service, and even though she is qualified to receive the instrument of marriage (the money or marriage certificate) she certainly cannot deprive her father of his other rights.

There is, however, a means by which she can receive her instrument of marriage, and that is by becoming the father's agent. In this case, also, the father is really the second party to the contract, and she acts only, just as any other stranger might act in the capacity of the father's agent. Thus, while she is the person, for whom in reality the marriage is contracted, yet in the part that she takes in the performance of this contract, she is a total stranger. Such are the peculiarities of law.[157]

When the daughter is to act as the agent of the father, the testimony of witnesses is necessary to prove that she was appointed by the father for that purpose.[158] Yet when it is known that the father intends to give her in marriage and makes preparations for the wedding, no witnesses are necessary for that purpose.[159]

Many post-Talmudic scholars have, however, objected to the law allowing the minor daughter to act as an agent for the father. A compromise was therefore made. The father was told to hold the hand of the daughter, when she received the instrument of marriage, or to stand near

money or the marriage certificate, while the latter consists in taking her home. Betrothal carries all the legal consequences of marriage proper, with the exception of that which may be of a pecuniary character.

[157] Kid. 19a. Yet that a minor should become an agent and perform the recipient act of the marriage performance is a matter that called forth comment from post-Talmudic scholars. Their explanations are hardly satisfactory (see Tosef., *ibid.*).

[158] Eben ha-Ezer 37, 7, note of Isserles. [159] *Ibid.*

her at that time. In this way the father was considered as the recipient of the marriage instrument.[160]

According to Jewish law, a person may act as agent in the interest of his principal, even though the principal has not expressly appointed him. Hence the marriage contracted with the minor daughter, even though the father did not appoint her expressly as an agent, is valid, provided there are indications that he would have consented to it, had he been informed of it before. If he protests afterwards, the marriage is void. Even she herself can invalidate, according to law, such a marriage, before the father has given his consent to it.[161] Controversies have repeatedly taken place among scholars, as to what is the law, in case there are no indications to prove that the father is in favour of it. Samuel decides that the marriage is to be dissolved by both, a bill of divorce and Mi'un. A bill of divorce is needed, because we suspect that the father may have consented to it. Mi'un is necessary, in order to remove the impression from people's minds that the marriage was valid, an impression that may be produced by the fact that a bill of divorce was necessary to absolve her from the marriage ties, and that may, therefore, result in serious consequences.[162] Ulla says that even Mi'un is not necessary. According to one tradition, Ulla maintains this opinion even in case proposals were made to the father previous to the marriage. According to another tradition, Ulla agrees with Samuel in the previous case.[163]

In practical life, however, the Rabbis considered every trivial circumstance connected with the marriage in order to determine whether the father consented. Rabina

[160] *Ibid.* [161] Kid. 45 a. [162] Kid. 44 b.
[163] *Ibid.*, see Tos., *ibid.* See Eben ha-Ezer 37, 11.

invalidated a marriage, because the bridegroom presented a bundle of herbs as the instrument of marriage. This undignified element in the marriage act, he declares, surely displeased the father, and caused him not to consent to the marriage.[164] One case came up to Abaye in which, prior to the marriage, the mother and the father had a dispute as to whether the minor daughter shall marry one of his or her relatives. Finally the father yielded, and they began to make preparations for the wedding. While they were enjoying themselves at the feast, one of the husband's relatives secretly performed the marriage act with the minor daughter. Abaye annulled the marriage, on the ground that the father cannot have consented to it, since such a consent would have proven contrary to the promise he made his wife.

When the betrothal took place with the consent of the father, but the marriage proper without his consent, then, if the father is present at the marriage, and is silent, Huna takes his silence as a sign of indignation, and Jeremiah as a sign of acquiescence.[165] If, however, both the betrothal and the marriage took place without his consent, under the same conditions, Huna maintains that the marriage is valid, for his silence in this case shows that he gave up his right of giving his daughter in marriage. The minor daughter has then the status of the minor female orphan whose marriage, as we shall have occasion to point out later, is rabbinically valid.[166]

Another controversy among Rabbis was occasioned by the marriage of the minor daughter whose father is alive, but is away from home in some distant land, so that absence is expected to be a very long one, or his return

[164] Kid. 45 b. [165] *Ibid.* [166] Kid. 45 b, 46 a.

doubtful altogether. The Rabbis gave the power to the mother and the brother of the orphaned minor daughter to give her in marriage, in order that she may not be seduced. R. Ahai Gaon maintains that the case of the minor daughter whose father is away in some distant place, is similar to the case of the minor orphan, and, therefore, the marriage of the former should also be rabbinically valid.[167] The same view is expressed in the Halakot Gedolot, and is corroborated by R. Tam.[168] Yet many scholars opposed it, on the ground that there is the possibility that the father may give her in marriage to some other man in the place where he lives.[169]

So much for the legal aspect of the marriage of the minor daughters. From the ethical point of view, Rab and, according to another tradition, R. Eleazar prohibits a man from giving his minor daughter in marriage, until she becomes mature and has intelligence enough to make a proper choice.[170] Yet different circumstances caused people to disregard this moral interdiction. The Tosafot in justification of this disregard say: 'That there is now prevalent among us the custom of giving the minor daughter in marriage, is due to the fact that the exile is becoming more and more pressing on us, so that although a man may, while the daughter is a minor, afford to give a dowry, he may not be able to give it later (when the daughter will have grown up), and she may thus remain unmarried for ever'.[171] More information about the post-Talmudic disputes concerning the propriety of the marriage of the minor daughter is given by Löw, *Die Lebensalter*, 169–75.

[167] Tos., *ibid.* [168] *Ibid.*
[169] *Ibid.* See Eben ha-Ezer 37, 14. [170] Kid. 41 a. [171] *Ibid.*

C. Divorce of the Minor Daughter.

After the marriage proper, the father cannot receive the bill of divorce for the minor daughter.[172] The complete act of marriage, as we shall see later, emancipates the minor from the power of the father.

The case is, however, different concerning the reception of the bill of divorce, when she is only betrothed, since the betrothal does not remove her from the power of the father.[173] According to R. Judah, the father alone has the exclusive power to receive her bill of divorce, until she becomes of full age. The opinion of the majority, however, is that in case of the betrothed *na'arah*, either the father or she herself can receive the bill of divorce.[174]

It is doubtful whether the term נערה in the phrase נערה המאורסה is used in its strict technical sense, referring only to the period between the age of twelve and twelve and six months.[175] This uncertainty resulted in a great

[172] Kid. 10a; Tos.; Yer. Git. VI, 2. From the Yer. it seems that if she does not have intelligence enough to watch the bill of divorce, the father has the power to receive it even after marriage proper; and yet the passage beginning with the words ניסת בין היא ובין אביה (Yer., *ibid.*) is difficult, even though we take it, in agreement with the commentators, to deal with a minor that is not mentally mature. The question that inevitably arises is, why should she then be able to receive the bill? If her lack of mental matureness interferes at all, then its interference should result, not in the addition of a second power granted to the father, but in her own disqualification for that purpose. It is also against the Talmud Babli (Git. 64 b) which, according to the interpretation of both Rashi and of R. Tam, maintains that the mentally premature minor cannot receive her bill of divorce. It may be true that the Babli speaks of receiving the bill after the betrothal. But it does not seem that there is any difference between the betrothal and the marriage proper in this respect.

[173] Git. 46b; Kid. 3b, 10a. This point will be discussed later in detail.

[174] Git. 54b; Kib. 43b.

[175] As far as the term *na'arah* in the Bible is concerned, the Rabbis admitted that it is a general term for a minor, with the exception of one case (Ket. 44 b).

controversy among post-Talmudic authorities. According to one opinion, represented mainly by the reading of Rashi in Giṭṭin 64 b, the word *na'arah* is used exclusively in its technical sense, and all, therefore, agree that the daughter under the age of twelve cannot receive the bill of divorce while the father is alive.[176] Isaac ben Meïr opposes this view, and maintains that by the term *na'arah* the Mishnah does not exclude the minor from the right of receiving the bill of divorce.

In receiving the bill of divorce as well as in receiving the instrument of marriage, the father does not act under the status of the agent of his minor daughter, but is, as it were, the real party of the second part, to whom the divorce bill is presented. This is the reason why the divorce is valid, if the father receives the bill, though according to Rabbi Judah, it would be invalid under all circumstances, had the bill been received by the daughter, or according to the other view, it would be invalid, had she received it without possessing enough mental matureness.[177] Marriage, as well as divorce, of minors is of merely theoretical importance to us now. But, up to a short time ago, both were matters of practical life, and the Rabbis had to render practical decisions in many a case. Fuller details concerning the divorce of the minor in post-Talmudic times can be found in Löw, *Die Lebensalter*, 175–6.

[176] This view is also shared by Maim., Yad, Gerush, II, 18, and by Alfasi (commentary on Git., *ibid.*).

[177] Git. 64 b. This is in agreement with the passage כל שאינו יודע לשמור, &c. as interpreted by Tos. According to Rashi, if she does not possess the ability of watching her bill of divorce, she cannot be divorced, even through the act of the father. According to our conception of the father's power, the view of Rashi in this case is wrong, since the father's action in this divorce performance is independent of the minor daughter.

D. Injuries to Minor Children.

Nothing is said in the Mishnah as to whether compensation for injuries inflicted on minor children goes to the father. There is, however, a passage in the Tosefta dealing with these points, but the text is so corrupt that nothing definite can be inferred from it as to what was the earlier law.[178] Two Baraitot are mentioned in the Talmud dealing with these questions, but they also contradict each other, and offer many difficulties. The explanations given by the Amoraim of these Baraitot are hardly satisfactory.[179] Therefore, we will limit ourselves to the definite statements of the Amoraim.[180]

Recovery for an injury, according to Jewish law, consists in compensation for the decrease in the value of the person, for the pain which the injured person suffers, for expense of healing the bruise or the wound, for loss of work during the time of illness, and for the humiliation which the injured person sustains. The money for the decrease in the value of the person is to amount to the difference between what he would obtain if he would sell

[178] The following is the reading of Tosefta, B. K. IX, 8, 9, 10.
החובל (*a*) בבנו ובבתו הגדולים חייב (*b*) ושל בתו נותנין לה מיד (*c*) ושל בנו עושה לו בהן סגולה (*d*) בבניו ובנותיו קטנים של עצמו פטור מן הכל (*e*) החובל בבתו קטנה נזקה שלה והשאר הרי זה פטור (*f*) חבלו בה אחרים נזקה שלה והשאר עושה לו בהן סגולה (*g*) החובל בבנו קטן חייב בכל (*h*) בעבדו ושפחתו הכנענים חייב בכל ופטור מן השבת.

This Tosefta is corrupt, and must also contain different passages from opposing schools. (*c*) contradicts either (*a*) or (*d*); (*e*) contradicts (*d*); (*g*) contradicts (*d*); (*h*) contradicts the Mishnah in B. K. VIII, 4.

[179] See B. K. 87 b.

[180] We may safely assert that in the earlier mishnic law where, as we have shown before, the principle was 'that their hand is like his hand', the remuneration for injuries went to the father.

himself as a slave after he has been injured, and before he was injured; the loss of service amounts to what he would earn as a watchman, which he could do even after his body had been injured, provided he was not confined to bed. Now, all agree that the payments for the pain, for the healing, and for the disgrace do not belong to the father.[181] The reason of it is evident. The injuries comprised in the last three headings are injuries not to the father,[182] but to the children, and the father not having any right to injure his children,[183] cannot have this right realized in the injuries the children have received from others. For the same reason, if the father inflicts injuries on his own children, they can recover from him for these three forms of damage.[184]

There is, however, a difference of opinion concerning compensation for the decrease in the value of the person, and the loss of service. R. Johanan says that they belong to the father.[185] Rab made a general statement to the negative, but did not specify whether his negative attitude referred to both or one of the fines. Abaye declares, therefore, that Rab admits that a fine for loss of service belongs to the father, because the father is

[181] See B. K. 87 b.

[182] It is evident that the fines for the decrease in the value of the person and for the healing are injuries to the child. The fine for humiliation depends on whether we understand by it the humiliation sustained by the injured individual, or by the whole family. The Talmud maintains that it is possible it has the former meaning (B. K. 86 b).

[183] B. K. 87 a.

[184] And yet some post-Talmudic authorities maintain that if the father supports the children, he is exempt from any payment (Hoshen ha-Mishpat 424. 6, note of Isserles).

[185] B. K. 87 b. It seems, however, that R. Johanan holds that even the remuneration for pain, healing, and disgrace goes to the father.

entitled to the service of his minor daughter, and the loss of service caused by the injury is a direct injury to the father. A post-Talmudic opinion maintains that, even according to Rab, the payment for the decrease in the value of the person belongs to her only in case the injury lasts until after she attains her majority, but if the injury disappears before she becomes of full age, this fine belongs to the father.[186]

According to Abaye, then, all agree that a fine for the loss of service belongs to the father, yet if there are indications that the father does not insist upon his financial claims towards his children, the fine for the loss of service belongs to his daughter, for we take it for granted that he would not desire to benefit by the injury inflicted upon his daughter. Such an attitude of the father is taken for granted, when his magnanimity is shown in his willingness to support his children.[187] If, however, the father himself injures his children, he does not pay them for the loss of service, for while he may not be inclined to increase

[186] Tos., B. K. 87b. To understand fully this distinction, we must say a few words concerning the nature of the recovery for the decrease of the value of the person. While the power of the father to sell his daughter as a slave became, after the destruction of the temple, a matter of mere theory, yet it served the Rabbis as a practical standard for deciding the nature of the rights the father possesses with regard to his daughter. The recovery for the decrease in value of the person in this case amounts to the difference between the amount she would obtain, if she were sold as a slave, after she has been injured, and the amount she would obtain before she was injured. Now, if the bodily damage is only temporary, and she will recover from it before she becomes of full age, this fine should belong to the father, as he has the power, theoretically, to sell her as a slave. If, however, the damage is permanent, the fine should belong to her, as the father does not have the right to sell her permanently as a slave.

[187] B. K. 97b. This fine, therefore, belongs to the father when she is not supported by him (*ibid.*).

his possessions from what he may get for injuries inflicted on his children by others, he would not wish to diminish his possessions by paying to his children for the injuries he has inflicted upon them.[188]

The data in the last paragraph are derived from the discussions of the Amoraim, who were attempting to reconcile the two conflicting Baraitot referred to at the beginning of this section. But, as we have mentioned before, their interpretations are not satisfactory. In the first place, the Baraitot do not deal with loss of service, but with compensation for injuries in general. Then the difference, which the Talmud here makes between the cases in which children are and those in which they are not supported by their father, leads to directly opposite results elsewhere (see B. M. 12). Again, nothing in the Amoraic discussions explains why the father should not give compensation for the injury he inflicts on his son.[189] If the father's rights to the fine for the daughter's loss of service is based on the father's rights to the service of his daughter, then the fine for the son's loss of service should not belong to the father, as the latter has no rights to the service of the former. Finally, there is no reason why adult children should not recover from their father,[190] if he happens to be the wrongdoer, since the father has certainly no right to the service of his adult children.

This is, however, the result of the attempt to reconcile two Baraitot which are contradictory, and to read into them meanings which are quite foreign to their original

[188] *Ibid.* See Tos., *ibid.*

[189] The Baraita says בבניו ובנותיו שלו פטור. The Talmud takes the Baraita to speak even of children of full age. It ignores altogether the need to account for the father's right to the remuneration for the son's interest.

[190] See previous note.

intent. They are closely allied to the Tosefta referred to before, and must have had the same origin.[191] No matter how much we try to reconcile these two Baraitot, it is quite impossible to reconcile the conflicting laws in the same passage of the Tosefta.

E. Seduction or Debauching the Minor Daughter.

The Bible distinguishes between two forms of debauching women, (1) violence, (2) and seduction. In case of violence, the wrongdoer is to marry the injured female, whom he can never divorce, and has to pay fifty shekels to the father.[192] In the case of seduction, he is not forced to marry her. If he marries her, he does not have to pay the fifty shekels.[193]

In the Mishnah, the fine is increased. In case of seduction, the Mishnah says the wrongdoer is to pay for the disgrace which she sustains, for the decrease in the value of the person, and a fixed fine[194] (the Biblical fifty shekels). In case of violence, he has also to pay for the pain she suffers.[195]

The payment of a fixed fine is a feature pertaining to seduction.[196] The other fines are not limited to the

[191] See above, chapter 4, note 38.

[192] Deut. 22. 28, 29. [193] Exod. 20. 15.

[194] The Talmud discerns in the Bible two classes of fines: the amount of one is fixed, irrespective of the amount of the loss caused by the injury; while the other is variable, and proportional to the damage. The fifty shekels for seduction belongs to the former class.

[195] Ket. 39 a.

[196] The fine of the fifty shekels is due to the fact that the destruction of the chastity of the child rendered it difficult for the father to get a husband for her, and so caused him a loss of fifty shekels, which he would get as Mohar (the purchase price) from the husband.

offence of seduction. They are the regular fines which one has to pay when he injures the body of another person.[197] The Talmud tries to find a basis for these additional Mishnic fines.[198] But no special basis is necessary. Seduction is merely a certain kind of injury, causing the same sort of damages as those caused by any other bodily injury. If it causes loss of service, and causes the expenses for curing to be incurred, recovery would certainly be had for these damages too. Thus there is nothing peculiar about the payments of the three fines mentioned before in connexion with the injury of seduction.

These fines are stated expressly in the Mishnah to belong to the father.[199] The fixed fine of the Bible also belongs to the father. If what we said in the last paragraph is true, and the payments for the pain, the disgrace, and the decrease in the value of the person, in case of seduction, are the regular fines of an injury, then we may infer from the case of seduction, that the fines of any other injuries to the daughter, belonged, according to Mishnaic law, to the father, or that the law of seduction is merely a survival of an early general law maintaining that the father has a right to the recovery for the injuries to the daughter. The Babylonian Talmud, as can be seen from our discussion in the previous section, ignores altogether such a relation between seduction and any other injuries. In the Palestinian Talmud a conscious distinction is proposed between the father's right to the recovery for seduction, and his right to the recovery for any other injury.[200] Consequently, the Amoraim tried to find a reason for the father's right to the fines for seduction.[201]

[197] See previous section. [198] Ket. 40 b. [199] Ket. IV, 1.
[200] Yer. Ket. IV, 1. See *ibid.*, Pene Mosheh. [201] Ket. 40 b.

The action in case of seduction is mainly based on the defiling of the daughter's chastity. If, therefore, her chastity has been once defiled, no action can be maintained by the father against the wrongdoer (Ketubbot 3. 1). The same is true if her innocence has been once suspected.[202] According to one view, the laws of seduction are to be applied only when she is a *na'arah*, i.e. during the six months between her twelfth and twelfth and a half year.[203] All agree that when she attains her majority no action can be maintained against the wrongdoer, even by the daughter herself.[204]

With the cessation of regular ordination, justice was administered upon the theory that unordained judges act only as the agents or the representatives of ordained judges. This principle holds good, however, neither in cases involving merely the payment of a fixed fine, nor in matters of rare occurrence, nor in matters which are not based on a direct loss of money.[205] Since seduction belongs to one of the cases mentioned in the last three categories, it cannot, therefore, come under the jurisdiction of unordained judges.[206] Hence the laws relating to seduction were not in force in Babylonia. But the freedom from punishment left young females unprotected. Stringent measures were also called for by other matters that could not come under the jurisdiction of unordained judges. As a result, the Geonim later enacted that the wrongdoer be put under a ban, if he refused, in some way or other to give satis-

[202] Ket. 63 b.

[203] Ket. III, 7. This is certainly out of harmony with practical life, and is in opposition to the more practical earlier law.

[204] Ket. 29, 40 b. That no action can be legally maintained for seducing a female after she reached her twelfth and a half year is also rather peculiar.

[205] B. K. 84 b. [206] See *ibid.*, Alfasi and Rashi.

faction to the injured person.[207] Thus, the young female was again placed under the protection of the law.

F. Annulling the Vows of the Daughter.

The Bible invested the father with the power to annul the vows of his daughter, which would, otherwise, be religiously binding on her. This annulment is valid only when it takes place on the same day, when the information of the daughter's vow reaches the father. Otherwise, his silence on this day is taken as a sign that he approves of the vow, and cannot, therefore, invalidate it later.

Later law declares that the vows of the betrothed minor daughter can be invalidated only by the joint participation in the annulment by the father and the bridegroom. The annulment of the one without the annulment of the other does not invalidate the vow.[208]

According to Bet Shammai, the annulment of each invalidates one complete half vow, without affecting the slightest degree the other half vow. According to Bet Hillel the annulment of each invalidates the whole vow to some extent. A practical difference might arise in the

[207] *Ibid.* See also Tur Eb. Haez. 177.

[208] Ned. X, 1. The Talmud tries to find a basis for this law. Its Biblical interpretation, however, is very inadequate. Yet it may have had a logical origin. The betrothal does not, as will be seen later, emancipate her from the power of the father. Vows constitute the only case where the power of the father over the daughter is found to be diminished in any way. On the other hand, the betrothal brings her legally to a great extent into the matrimonial relationship with the person who marries her, and whom the Bible invests with the power of annulling her vows when she becomes his wife. The natural result would then be that the betrothed minor daughter should be subject to the powers of both at the same time, the father and bridegroom. The power of the bridegroom is an additional one to that of the father.

following case. Suppose the food from which she vowed to abstain is in quantity equivalent to two olives (an olive is the quantity of forbidden food that must be eaten in order to incur corporal punishment), and only one gave his annulment. According to Bet Shammai, this annulment invalidated the vow only with reference to the amount of one olive leaving the vow with regard to the other half in its complete validity. The eating then of the whole amount would involve the infliction of corporal punishment. According to Bet Hillel the whole vow became partially invalidated. Thus, the amount of olive left is not sufficient to sustain the complete binding power of the vow. The eating, therefore, of the whole amount is the commission of a transgression which does not involve corporal punishment.[209]

The power which the father has in annulling the vows of the betrothed daughter is greater than the power of the bridegroom. The power of the bridegroom is transmitted to the father after the latter's death. Therefore, the father can annul the vow which the daughter took before the bridegroom's death, if there are not data to show that the husband in any way approved of the vow.[210] But the power of the father cannot be transferred, after his death, to the bridegroom, and, therefore, the bridegroom cannot annul the vow which the daughter took previous to the father's death. Nay more, the husband's annulment is ineffective in such a case, even though the father offered his share in annulling the vow before his death.[211]

[209] Ned. 68 a. [210] Tosefta, Ned. IV, 8; Gem., *ibid.* 68.
[211] Tosefta, *ibid.* 3; Gem., *ibid.*

G. Emancipation of the Daughter from the Power of the Father.

The daughter is released or emancipated from the father's power, (1) when she attains her majority, (2) when she marries, (3) and when her father dies.

(1) *Attaining her Majority.*

The daughter becomes partially emancipated from the father's power the moment she shows the presence of signs of puberty, which appear usually at the age of twelve. She attains at this age a semi-state of majority, and is called *na'arah.* She is emancipated from her master at that age, if her father sold her as a slave while she was a minor, and she cannot from now on be sold any more as a slave.[212] From now on, she can also receive her own bill of divorce,[213] and according to some, also her own instrument of marriage.[214] In all other respects, the father exercises full power over her until she reaches her twelfth year and a half, when she becomes of full age, and is legally entirely emancipated from the father's power.

(2) *Marriage.*

The betrothal itself deprives the father of some of his rights. After the betrothal, he loses the power of alone annulling the vows of the daughter.[215] In case of seduction, the fixed fine does not belong to him any longer.[216] According to Rabbi Jose, there is no recovery whatever of a fixed

[212] Kid. 14 b.
[213] Git. 64 b.
[214] Kid. 43 b.
[215] Ned. X, 1.
[216] Ket. III, 3; Gem., *ibid.* 38. This case of seduction is spoken of as taking place after she is divorced from her bridegroom. Otherwise, a heavier punishment is inflicted upon the offender, and then there is no fixed fine.

fine, if the daughter has once been betrothed. It is true that, according to this opinion, the loss of the father's claim to this fine does not mean that the betrothal caused a loss of a parental right, but that the fine is eliminated by certain regulations governing the case of seduction. But according to Rabbi Akiba, the fixed fine belongs to the daughter herself, which certainly means a loss of a right on the part of the father.[217]

From the last two facts, it would seem that the betrothal brings with it partial emancipation for the daughter. The Talmud says expressly that this is indicated by the father's loss of his power of alone annulling the vows.[218] Yet it does not necessarily follow. The incapability of the father to annul the vows of his betrothed daughter need not be the result of a reduction of his parental power, but the creation of an additional power of the bridegroom, to which the daughter becomes subjected.[219] In the case of the fixed fine, Rabbi Jose and Rabbi Akiba seem to base their opinions on different interpretations of a certain Biblical verse, which apparently has no bearing on the question of the emancipation of the daughter.

With the exception of the loss of these two rights, the father exercises full power over the betrothed minor daughter. When she is divorced, the amount of the Ketubbah belongs to the father.[220] He has also the power to receive her bill of divorce.[221] According to one post-Talmudic interpretation of the view of the Mishnah (Giṭṭin 6. 2), the betrothed daughter can also receive her

[217] *Ibid.*

[218] Ket. 39 a.

[219] See note 208.

[220] Ket. 43 b.

[221] Git. VI, 2; Ket. 40 b. All commentators agree that the passage in Ket. refers to the divorce of the betrothed.

bill of divorce, even when she is under twelve. But this view does not necessarily imply a reduction in the power of the father. It is probable that she needs her father's consent to it, and the Mishnah merely tells us that she possesses the legal power to receive the bill.

Whatever may be the view with regard to the betrothal, all agree that the marriage proper completely emancipates the minor daughter from the power of the father.[222] She is then called 'an orphan while the father is living'. Like an orphan she is no longer controlled by her father. If she is divorced while she is yet a minor, she is no longer subjected to the power of the father.[223]

(3) *Death of the Father.*

The daughter becomes emancipated from the power of the father by the latter's death. Therefore, the rights of the father with regard to his minor daughter are not transferred to his sons after his death. The minor daughters are to be supported from the property inherited by the minor brothers, and yet neither the service nor the earnings of the former belong to the latter.[224]

[222] Ned. X, 6; Gem., *ibid.* 89. [223] *Ibid.* [224] Ket. 43 a.

(To be continued.)